IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4734 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AT JHADWANI - Petitioner(s)
Versus
STATE OF GUJARAT THROUGH SECRETARY & 2 - Respondent(s)

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Appearance :
MR BIREN A VAISHNAV for Petitioner(s) : 1,
NOTICE SERVED for Respondent(s) : 1 - 2.
MR ARCHNA RAVAL, ASST. GOVERNMENT PLEADER for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 22/09/2006

ORAL JUDGMENT

1. By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed for an appropriate writ, order and/or direction to quash and set aside the orders dated

29.10.1990 (Annexure – E), 4.10.1994 (Annexure – J) and 22.2.1996 (Annexure – K) passed pursuant to the disciplinary proceedings held against the petitioner.

2. The facts as narrated in the memo of petition, are as under :-

The petitioner was at the relevant time discharging his duties as Police Constable at Astodia police station was charged with certain acts of misconduct in discharge of his duties as police constable. A charge-sheet dated 18.10.1988 was issued in respect of the misconduct so committed and in departmental proceedings, the petitioner was placed under suspension by order dated 27.10.1988. Thereafter an Inquiry Officer was appointed by the department and the Inquiry Officer submitted its report exonerating the petitioner of all the six charges framed by the department. The Deputy Inspector General of Police, Junagadh issued a show cause notice of disagreement dated

22.6.1990 observing that charges No.1 to 4 could not be proved as the witnesses presented in support of the department had turned hostile. The notice further states that though the charge Nos.1 to 4 pertains to late filing of the complaint with an oblique motive the circumstances warrant that charges Nos.5 and 6 which pertain to failure in carrying out of identification parada and for maintaining of station diary ought to be treated proved as no identification parade in accordance with the provisions of law and therefore, the petitioner was called upon to show cause as to why his pay scale should not be reduced to minimum of the scale for a period of two years and why the period of suspension should not be treated as such. The petitioner submitted his reply on 29.7.1990. After considering the reply submitted by the petitioner dated 29.7.1990, the Deputy Inspector General of Police by its order dated 29.10.1990 imposed punishment of reducing the pay of the petitioner to the minimum of Rs.1640/- for a period of two years and treated

the period of suspension from 29.10.188 to 25.6.1990 as such.

Being aggrieved and dissatisfied with the order passed by the Deputy Inspector General of Police dated 29.10.1990, the petitioner preferred an appeal to the Director General of Police. That the Director General of Police by its order dated 21.3.1992 set aside the order dated 29.10.1990 on the ground that the petitioner was not offered an opportunity of personal hearing before the Deputy Inspector General of Police, Junagadh and remanded the matter to the Deputy Inspector General of Police, Junagadh to pass a fresh order after hearing the petitioner. Thereafter, a fresh notice came be issued upon the petitioner on 26.3.1992 by the Deputy Inspector General of Police, Junagadh for rehearing and the petitioner filed a reply on 7.5.1992. By an order dated 13.7.1992 the penalty of reduction in pay w.e.f. 1.8.1992 came to be imposed and the period of suspension from 29.10.1988 to 25.6.1990 was directed to be

treated as on duty. Thereafter, the Director General of Police issued a suo-motu notice in exercise of powers under Section 27(A) of the Bombay Police Act; 1951 asking the petitioner to show cause as to why the period of suspension, which was treated as on duty pursuant to the order dated 13.7.1992 should not be treated as under suspension. That the Director General of Police by its order dated 4.10.1994 after giving the petitioner an opportunity of hearing held that in view of the fact that the charges were held to be proved under Rule 152 of the Bombay Civil Services Rules, suspension was not wholly unjustified and hence, the period of suspension from 29.10.1988 to 25.6.1990 cannot be treated as on duty. The petitioner represented to the State Government against the said order dated 4.10.1994 and the State Government rejected the said representation on 22.2.996. Being aggrieved and dissatisfied with the aforesaid orders, the petitioner has preferred the present Special Civil Application under Article 226 of the Constitution of India.

3. Mr. Vaishnav, learned Counsel appearing on behalf of the petitioner has vehemently argued that the order imposing penalty of reduction in the pay to the minimum of Rs.1640/- for a period of two years and that treating the period of suspension from 29.10.1988 to 25.6.1990 as under suspension is unjust, illegal and arbitrary. Relying on the findings made by the Inquiry Officer's report, it is the case of the petitioner that when, the inquiry officer has exonerated the petitioner of all the charges after a detailed discussion, it was not open for the disciplinary authority to disagree with the same, in part, in so far as charges 5 and 6 are concerned and hold the petitioner guilty of misconduct. Mr. Vaishnav has further submitted that the orders passed by the authorities are bad, inasmuch as, though in principle they agree with the findings of the inquiry officer with regard to charges 1 to 4 the same charges are taken into consideration for holding the other charges, namely, charges 5 and 6 as proved.

4. Mr. Vaishnav has further tried to submit that while passing the orders impugned herein the authorities below have observed that, the petitioner, while in discharge of his duties, failed to carry out identification parade of the accused, only with a view to help the accused. This, in the submission of Mr. Vaishnav, was never the charge and therefore, while imposing the penalty the authorities below have travelled beyond the charge-sheet.

5. Mr. Vaishnav learned counsel for the petitioner has further submitted that at best, even if it is presumed that the petitioner failed to carry out the identification parade, such action cannot be said to be a misconduct, as it was not motivated.

6. Lastly, it was submitted by Shri Vaishnav, learned counsel for the petitioner, that the orders are harsh, in as much as the financial implications of the order are very bad.

Attention of this Court, is invited by Mr. Vaishnav to the averments made in para – 4.10 of the petition.

7. Ms. Archna Raval, learned AGP, on the other hand has tried to support the orders passed by the authorities below. It is the case of the learned AGP that on reading the charge-sheet and the reasonings made out in the impugned orders it is apparent that the charges levelled against the petitioner are serious. The case of the department is that the petitioner as police constable, Astodia Police Station, did not register a complaint of theft and delayed the same with ill motives. It was further alleged that the petitioner had asked for illegal gratification for the purpose of registering a complaint and for being negligent and not carrying out identification parade. Learned AGP has pointed out that though the inquiry officer may have held all the charges as not proved the same was so because the witnesses had turned hostile. It is further pointed out by the

learned AGP that though the disciplinary authority had held charges 5 and 6 as proved the authorities can take into account the totality of the charges including charges 1 to 4, which have only not been held to be proved because of the witnesses being declared as hostile. It is further submitted that looking to the alleged acts of misconduct, the charges are serious enough so as to warrant the order impugned herein because they are against police officer in discharge of public duty.

8. Heard the learned advocates appearing on behalf of the parties.

9. Having given an anxious consideration to the submissions made by the learned advocates appearing on behalf of the parties and having gone through the charge-sheet, the inquiry report and the orders impugned herein, following facts emerge from the record.

(i) The petitioner was a police constable attached to the Astodia Police

Station and as a police officer was duty bound to carry out the duties that a police officer is expected to in daily routine.

(ii) Six allegations of misconduct have been alleged against the petitioner which if taken as a whole point out that as a police constable he did not act with promptness and register a complaint of theft when the complainant and his son came to the police station. Further not only did he register a complaint promptly but asked for illegal gratification when asked to look for and search for the missing silver comments and it is the case of the department that of the Rs.1300/- demanded from the complainant. Rs.500/- was paid on his instructions to his subordinate. That the petitioner did not carry out the identification parade of the accused when brought to the police station in accordance with the provisions of the Code of Criminal Procedure and also did not record the proceedings in the station diary.

(iii) The charges, though separately narrated as six omissions are a part of the same transaction and if the Inquiry

Officer has held all the six as not proved the Disciplinary Authority was right in disagreeing with the Inquiry Officer on the charge No.5 and 6 and take into consideration the circumstances under which the first four were not held to be proved, while coming to the conclusion that a penalty was warranted even if the four were not proved. This was particularly so because the departmental witnesses had turned hostile.

(iv) Undisputedly it is a matter of record that the complainant had lodged a complaint even with the Anti-Corruption Department against the petitioner to the effect that a demand of Rs.1300/- was made by the petitioner from the complainant to proceed with the complaint.

10.On going through the records of the case and considering the reasonings of the Disciplinary Authority, it is clear that the authorities have taken into consideration the conduct of the petitioner, who was a police officer on duty and who had tried to stop investigation of an offence right from registering the same and

carried out further formalities in accordance with the provisions of law. It also appears that there was an allegation that a demand for illegal gratification was made. Taking into consideration all these aspects of the matter, it cannot be said that the authorities have in any manner acted contrary to law or in an unjust or harsh manner as it tried to be made out by the learned counsel appearing on behalf of the parties.

11. Scope of judicial review in disciplinary matters is very restricted and the High Court cannot sit over the orders of the Disciplinary Authority as if the High Court is exercising its appellate powers. In case of ***D.S.P. Regional Rural Bank V/s. Munna Lal Jain*** reported in **AIR 2005 SC P.584** the Supreme Court has observed as under :-

> *"9. The scope of interference with quantum of punishment has been the subject matter of various decisions of this Court. Such interference cannot be a routine matter.*

10. Lord Greene said in 1948 in the famour Wednesbury case (1948(1) KB 223) that when a statute gave discretion to an administrator to take a decision, the scope of judicial review would remain limited. He said that interference was not permissible unless one or the other of the following conditions was satisfied, namely, the order was contrary to law, or relevant factors were not considered, or irrelevant factors were considered; or the decision was one which no reasonable person could have taken. These principles were consistently followed in the UK and in India to judge the validity of administrative action. It is equally well known that in 1983, Lord Diplock in Council for Civil Services Union V/s. Minister of Civil Services [(1983) 1 AC 768] (called the CCSU case) summarized the principles of judicial review of administrative action as based upon one or other of the following viz. Illegality, procedural irregularity and irrationality. He however opined that "proportionality" was a "future possibility."

11. In Om Kumar and others v. Union of India (2001 (2) SCC 386), this Court

observed, inter alia, as follows:

"The principle originated in Prussia in the nineteenth century and has since been adopted in Germany, France and other European countries. The European Court of Justice at Luxembourg and the European Court of Human Rights at Strasbourg have applied the principle while judging the validity of administrative action. But even long before that, the Indian Supreme Court has applied the principle of 'proportionality' to legislative action since 1950, as stated in detail below :

By 'proportionality', we mean the question whether, while regulating exercise of fundamental rights, the appropriate or least-restrictive choice of measures has been made by the legislature or the administrator so as to achieve the object of the legislation or the purpose of the administrative order, as the case may be. Under the principle, the court will see that the legislature and the administrative authority "maintain a proper balance between the adverse effects which the legislation or the administrative order may have on the rights, liberties or

interests of persons keeping in mind the purpose which they were intended to serve". The legislature and the administrative authority are, however, given an area of discretion or a range of choices but as to whether the choice made infringes the rights excessively or not is for the court. That is what is meant by proportionality.

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"The development of the principle of 'strict scrutiny' or 'proportionality' in administrative law in England, is, however, recent. Administrative action was traditionally being tested on Wednesbury grounds. But in the last few years, administrative action affecting the freedom of expression or liberty has been declared invalid in several cases applying the principle of 'strict scrutiny'. In the case of these freedoms, Wednesbury principles are no longer applied. The courts in England could not expressly apply proportionality in the absence of the convention but tried to safeguard the rights zealously by treating the said rights as basic to the common law and the courts then applied the strict

scrutiny test. In the Spycatcher case Attorney General v. Guardian Newspapers Ltd., (No. 2) (1990) 1 AC 109 (at pp. 283-284), Lord Goff stated that there was no inconsistency between the convention and the common law. In Derbyshire County Council v. Times Newspapers Ltd. (1993) AC 534, Lord Keith treated freedom of expression as part of common law. Recently, in R. v. Secy. of State for Home Deptt. ex p. Simms (1999) 3 All ER 400 (HL), the right of a prisoner to grant an interview to a journalist was upheld treating the right as part of the common law. Lord Hobhouse held that the policy of the administrator was disproportionate. The need for a more intense and anxious judicial scrutiny in administrative decisions which engage fundamental human rights was re-emphasied in R. v. Lord Saville ex p. (1999) 4 All ER 860 (CA), at pp. 870, 872). In all these cases, the English Courts applied the "strict scrutiny" test rather than describe the test as one of "proportionality". But, in any event, in respect of these rights "Wednesbury" rule has ceased to apply.

However, the principle of "strict

scrutiny" or "proportionality" and primary review came to be explained in R. v. Secy. of State for the Home Deptt. ex. p. Brind (1991) 1 AC 696. That case related to directions given by the Home Secretary under the Broadcasting Act, 1981 requiring BBC and IBA to refrain from broadcasting certain matters through persons who represented organizations which were prescribed under legislation concerning the prevention of terrorism. The extent of prohibition was linked with the direct statement made by the members of the organizations. It did not however, for example, preclude the broadcasting by such persons through the medium of a film, provided there was a "voice-over" account, paraphrasing what they said. The applicant's claim was based directly on the European Convention of Human Rights. Lord Bridge noticed that the Convention rights were not still expressly engrafted into English law but stated that freedom of expression was basic to the Common law and that, even in the absence of the Convention, English Courts could go into the question (see pp. 748-49).

".... whether the Secretary of State, in

the exercise of his discretion, could reasonably impose the restriction he has imposed on the broadcasting organisations"

and that the courts were

"*not perfectly entitled to start from the premise that any restriction of the right to freedom of expression requires to be justified and nothing less than an important public interest will be sufficient to justify it.*"

Lord Templeman also said in the above case that the courts could go into the question whether a reasonable minister could reasonably have concluded that the interference with this freedom was justifiable. He said that "in terms of the Convention" any such interference must be both necessary and proportionate (ibid pp. 750-51).

In the famous passage, the seeds of the principle of primary and secondary review by courts were planted in the administrative law by Lord Bridge in the Brind case (1991) 1 AC 696. Where Convention rights were in question the courts could exercise a right of primary

review. However, the courts would exercise a right of secondary review based only on Wednesbury principles in cases not affecting the rights under the Convention. Adverting to cases where fundamental freedoms were not invoked and where administrative action was questioned, it was said that the courts were then confined only to a secondary review while the primary decision would be with the administrator. Lord Bridge explained the primary and secondary review as follows :

"The primary judgment as to whether the particular competing public interest justifying the particular restriction imposed falls to be made by the Secretary of State to whom Parliament has entrusted the discretion. But, we are entitled to exercise a secondary judgment by asking whether a reasonable Secretary of State, on the material before him, could reasonably make the primary judgment."

But where an administrative action is challenged as "arbitrary" under Article 14 on the basis of Royappa (1974) 4 SCC 3 (as in cases where punishments in disciplinary cases are challenged), the

question will be whether the administrative order is "rational" or "reasonable" and the test then is the Wednesbury test. The courts would then be confined only to a secondary role and will only have to see whether the administrator has done well in his primary role, whether he has acted illegally or has omitted relevant factors from consideration or has taken irrelevant factors into consideration or whether his view is one which no reasonable person could have taken. If his action does not satisfy these rules, it is to be treated as arbitrary. In G.B. Mahajan v. Jalgaon Municipal Council (1991) 3 SCC 91 at p.111 Venkatachaliah, J. (as he then was) pointed out that 'reasonableness' of the administrator under Article 14 in the context of administrative law has to be judged from the standpoint of of Wednesbury rules. In Tata Cellular v. Union of India (1994) 6 SCC 651 at pp. 679-80); Indian Express Newspapers Bombay (P) Ltd. vs. Union of India (1985) 1 SCC 641 at p. 691); Supreme Court Employees' Welfare Assn. v. Union of India (1989) 4 SCC 187 at p. 241) and U.P. Financial Corpn. v. Gem Cap (India) (P) Ltd. (1993) 2 SCC 299 at p. 307)

while judging whether the administrative action is "arbitrary" under Article 14 (i.e. otherwise than being discriminatory), this Court has confined itself to a Wednesbury review always.

The principles explained in the last preceding paragraph in respect of Article 14 are now to be applied here where the question of "arbitrariness" of the order of punishment is questioned under Article 14.

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Thus, from the above principles and decided cases, it must be held that where an administrative decision relating to punishment in disciplinary cases is questioned as "arbitrary" under Article 14, the court is confined to Wednesbury principles as a secondary reviewing authority. The court will not apply proportionality as a primary reviewing court because no issue of fundamental freedoms nor of discrimination under Article 14 applies in such a context. The court while reviewing punishment and if it is satisfied that Wednesbury principles are violated, it has normally to remit the

matter to the administrator for a fresh decision as to the quantum of punishment. Only in rare cases where there has been long delay in the time taken by the disciplinary proceedings and in the time taken in the courts, and such extreme or rare cases can the court substitute its own view as to the quantum of punishment."

12. In B.C. Chaturvedi v. Union of India and others, (1995 (6) SCC 749) it was observed:

"A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the

conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/ appellate authority to re-consider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

13. In Union of India and another v. G. Ganayutham (1997 (7) SCC 463), this Court summed up the position relating to proportionality in paragraphs 31 and 32, which read as follows:

"The current position of proportionality in administrative law in England and India can be summarized as follows :

(1) To judge the validity of any administrative order or statutory discretion, normally the Wednesbury test is to be applied to find out if the decision was illegal or suffered from procedural improprieties or was one which no sensible decision-maker could, on the material before him and within the framework of the law, have arrived at. The court would consider whether relevant matters had not been taken into

account or whether irrelevant matters had been taken into account or whether the action was not bona fide. The court would also consider whether the decision was absurd or perverse. The court would not, however, go into the correctness of the choice made by the administrator amongst the various alternatives open to him. Nor could the court substitute its decision to that of the administrator. This is the Wednesbury (1948 1 KB 223) test.

(2) The court would not interfere with the administrator's decision unless it was illegal or suffered from procedural impropriety or was irrational - in the sense that it was in outrageous defiance of logic or moral standards. The possibility of other tests, including proportionality being brought into English administrative law in future is not ruled out. These are the CCSU (1985 AC 374) principles.

(3) (a) As per Bugdaycay (1987 AC 514); Brind (1991 (1) AC 696) and Smith (1996) (1) All ER 257) as long as the Convention is not incorporated into English law, the English courts merely exercise a secondary judgment to find

out if the decision-maker could have, on the material before him, arrived at the primary judgment in the manner he has done.

(3)(b) If the Convention is incorporated in England making available the principle of proportionality, then the English courts will render primary judgment on the validity of the administrative action and find out if the restriction is disproportionate or excessive or is not based upon a fair balancing of the fundamental freedom and the need for the restriction thereupon.

(4)(a) The position in our country, in administrative law, where no fundamental freedoms as aforesaid are involved, is that the Courts/Tribunals will only play a secondary role while the primary judgment as to reasonableness will remain with the executive or administrative authority. The secondary judgment of the court is to be based on Wednesbury and CCSU principles as stated by Lord Greene and Lord Diplock respectively to find if the executive or administrative authority has reasonably arrived at his decision as the primary authority.

(4)(b) Whether in the case of administrative or executive action affecting fundamental freedoms, the courts in our country will apply the principle of 'proportionality' and assume a primary role, is left open, to be decided in an appropriate case where such action is alleged to offend fundamental freedoms. It will be then necessary to decide whether the courts will have a primary role only if the freedoms under Articles 19, 21 etc. are involved and not for Article 14.

Finally, we come to the present case. It is not contended before us that any fundamental freedom is affected. We need not, therefore, go into the question of "proportionality". There is no contention that the punishment imposed is illegal or vitiated by procedural impropriety. As to "irrationality", there is no finding by the Tribunal that the decision is one which no sensible person who weighed the pros and cons could have arrived at nor is there a finding, based on material, that the punishment is in "outrageous" defiance of logic. Neither Wednesbury nor CCSU tests are satisfied. We have still to

explain "Ranjit Thakur (1987) (4) SCC 611)."

14. The common thread running through in all these decisions is that the Court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the Court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in Wednesbury's case (supra) the Court would not go into the correctness of the choice made by the administrator open to him and the Court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision."

12.The aforesaid view is further confirmed by the Hon'ble Supreme Court in the recent decision in case of ***Government of A.P. and Others V/s. Mohd. Nasrullah Khan*** reported in **(2006) 2 SCC P.373** and in paras – 11, 12 and 13 the Supreme Court has observed as under :-

*"**Para – 11** :- By now it is a well-established principle of law that the High Court exercising power of judicial review under Article 226 of the Constitution does not act as an appellate authority. Its jurisdiction is circumscribed and confined to correct errors of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of principles of natural justice. Judicial review is not akin to adjudication on merits by reappreciating the evidence as on appellate authority.*

***Para – 12** :- We may now notice a few decisions of this Court on this aspect avoiding multiplicity. In Union of India V/s. Parma Nanda, K. Jagannatha Shetty, J., speaking for the Bench, observed at SCC P.189, para – 27 as under :-*

> *"27. We must unequivocally state that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the inquiry officer or*

competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso of Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is mala fide is certainly not a matter for the Tribunal to concern itself with. The Tribunal also cannot interfere with the penalty if the conclusion of the inquiry officer or the competent authority is based on evidence even if some of it is found to be irrelevant or

extraneous to the matter."

Para – 13 *:- Again, the same principle has been reiterated by this Court in B.C. Chaturvedi V/s. Union of India, K. Ramaswamy, J., speaking for the Court, observed at SCC P.759, para – 12 as under :-*

> *"12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in eye of the Court. When an inquiry is conducted on charges of a misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice be complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the*

power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent office is guilty of the charge. The Court/Tribunal on its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at the own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry of where the conclusion or finding reached by the disciplinary authority is

based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case."

13. In the present case, there is no allegation of violation of the principles of natural justice or the inquiry inconsistent with the mode of procedure prescribed by the rules and/or regulations. This Court, therefore, in exercise of powers under Article 226 of the Constitution of India cannot interfere with the discretion of the authorities below particularly when no any procedural infirmity or illegality has been pointed out by the learned counsel appearing for the petitioner.

14. So far as the contention of the learned counsel appearing on behalf of the petitioner that the authorities could not be treated the period of

suspension for a period of two years and the same was unjust and harsh is concerned, the same needs to be rejected at the threshold. The learned AGP has rightly pointed out that in accordance with the provisions of Rule – 152 of the Bombay Civil Services Rules, once the employee has been punished, the suspension cannot be termed as wholly unjustified and therefore, to treat the period of suspension as such is not illegality. Considering the facts and circumstances of the case as stated above, it cannot be said that the orders passed by the authorities below are in any way arbitrary and/or contrary to the rules and/or regulations.

15. For the reasons stated above, there is no substance in the present Special Civil Application and the same is required to be dismissed and is accordingly dismissed. Rule is discharged. Ad-interim relief, if any, stands vacated forthwith. However, there shall be no order as to costs.

[M.R.SHAH, J.]

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